For the Shareholders.

12X

Ottawa Temperance Coffee House Company
(Limited.)

EXTRACT FROM THE REPORT OF RICHARD JOHN WICKSTEED, PRESIDENT AND SOLICITOR OF THE COMPANY, PRESENTED AT THE ANNUAL GENERAL MEETING OF THE SHAREHOLDERS HELD AT OTTAWA ON MONDAY, 6TH FEBRUARY, 1888.

ONTARIO.

First Division Court,

COUNTY OF CARLETON.

Ottawa, 10th December, 1887.

MASSON (I.E. MCCULLOCH OR CODE) VS. WICKSTEED.

Cheque of the President of an Incorporated Company. His liability.

The Defendant held personally liable for cheque, although signed by him in his quality of President of Coffee House Company, because the corporate name of the Company was not included in the body of the cheque, or properly attached to it.

This was an action brought by McCulloch,—Masson being a borrowed name,—to recover the value of a dishonored cheque drawn by the Defendant as President of the Coffee House Company, in his the Plaintiff's favor, for wages due by the Company to him as Manager.

The cheque read as follows:—

"Charge to account of Temperance Coffee House Company.

"Ottawa, 30th April, 1887.

"To the Bank of Montreal, Ottawa, Pay to W. T. McCulloch, or order, the sum of Fifty Dollars.

"$50.00. "R. J. WICKSTEED,
" Pres. O. T. C. H. Co.

Endorsed "W. T. McCulloch."

Dr. R. J. Wicksteed.—This cheque was issued and post-dated in obedience to the following resolution passed by the Board of Directors, on the 4th of March, 1887:—

"Resolved that a cheque be issued for $50.00, dated 30th of April, for Mr. McCulloch."

The Defendant signed cheque, as president, according to custom. The cheque was discounted by Masson, but dishonored on presentment, there being "no funds." No one was deceived, all the parties, Drawer, Payee, Endorser, Bank, considered they were dealing with the Company's cheque. It was given for work done for the Company, and was not paid owing to the misfortune of the Company alone. The Company should have been sued. The cheque was manufactured out of an ordinary blank form issued by the Bank of Montreal, and was a *facsimile* of that issued by the presidents of other local companies, notably that of "The Ottawa Gas Company," who used an ordinary blank, stamped "The Ottawa Gas Co." across one end of the face, and had it signed "F—— C———, Managing Director, The Ottawa Gas Co."

The question of personal liability of the President, could not be raised, inasmuch as all the parties were fully acquainted with the circumstances under which it was issued: until dishonored, all were agreed that it was the Company's cheque. But even if any person had been deceived as to whose security he possessed, surrounding facts must determine the liability of the Drawer. "Whether he is so liable depends upon the "terms of the particular contract construed in connection with the sur- "rounding circumstances, and the relative situations of the parties, at "the time the contract was entered into." (Addison on Contracts, 7th Ed., p. 61.)

"When the Directors are expressly authorized to accept bills or "issue promissory notes on behalf of the company, the company will be "bound if the authority is substantially acted upon. It need not be "exercised in the very terms in which it is given, or be strictly or tech- "nically accurate in point of form."—(Ibid. 979.)

See also the following American cases:—"When individuals sub- "scribe their proper names to a promissory note, *prima facie* they are "personally liable, though they add a description of the character in "which the note is given, but such presumption of liability may be re- "butted by proof that the note was, in fact, given by the makers as "agents, for a debt of the principal due to the payee, with the payee's "knowledge,—(17 Wend. Rep. 40.)

"Where a party dealing with an agent, takes his promissory note, "with a knowledge of his agency, and of the liability of the principal "for the debt for which the note is given, he, thereby, charges the prin- "cipal."—(10 Metc. Rep. Mass. 160.)

"In commercial cases, in furtherance of the public policy of en- "couraging trade, if it can, upon the whole instrument be collected, that "the true object and intent were to bind the principal, and not merely

"the agent, courts of justice will adopt that construction of it, however "informally it may be expressed.—(22 Wend. Rep., N. Y., 324.)

In the present case, however, there has never been any difficulty as to the liability of the company. The debt has always been acknowledged to be that of the company, but the company has never been asked to pay. On the 28th September, 1887, it was moved by Mr. Featherston and seconded by Mr. Hope, and resolved :—

"That the directors hereby acknowledge that the check issued by the president in favor of W. T. McCulloch, is a liability of the company, and has always been such."

Dr. Wicksteed concluded by citing the judgment in "The Bank of Ottawa vs. Hamilton," (U. C. P. reports, vol. 28, p. 488) as the correct judgment in an almost identical position.

W. J. Code, contra, pleaded that the name of the company was not properly attached to the cheque, citing in support the following cases :—Bank of Montreal vs. Depatre, 5 Q. B. ; Foster vs. Geddes, 14 Q. B. ; Robertson vs. Glass, 20 C. P. ; Haggarty vs. Squier, 42 U. C. R. ; Brown vs. Howland, 9 Ontario reports.

Lyon, C. J.—Judgment for plaintiff. The name of the Coffee House Company should have been introduced into the body of the cheque. The cheque as it stands is an order to the bank cashier to pay the amount of fifty dollars to McCulloch out of the private account of the Defendant.

The above case was heard on the 2nd December, 1887.

The first inkling of such a suit having been determined on by Mr. Code was a letter from him to Defendant in June.

Your president, the Defendant, often brought up the matter at the Board of Directors and was always met with a smile, and the remark, "that's your cheque Doctor."

Thinking it was a good natured attempt at bluff on the part of his co-directors to coax him to pay the debt, and confident that the directors would come forward before the case was argued and pay their shares, your president did not press them further.

But when the case was heard on 2nd December, before Judge Lyon, the Defendant's witnesses proved false and traitorous. Mr. McCulloch swearing to statements the opposite to those he had made in the same box in August, and Messrs. Hope and Featherston were reticent, shuffling and evasive, doing all the damage to your presidents' position they could.

The president's eyes then began to open to the fact that these witnesses were prepared to injure the company provided they could only annoy him.

He therefore wrote to Dr. J. A. Macpherson, the late manager, (a man, who although unfortunate in his management, is a man of refinement, honor and probity,) as follows :—

Ottawa, 5th December, 1887.

Prof. J. A. Macpherson,
Late Manager O. T. C. H.,

SIR,—The cheque for $50, which, according to resolution, I made as President of O. T. C. Co'y in favor of W. T. McCulloch was not paid owing to want of funds. Suit has been brought against me as the maker. I am defending, of course, as the cheque is the company's cheque for company's work.

I am lead to believe that the suit has been instigated by Hope and Featherston to pay me off for some imagined slight to them. They have behaved very meanly throughout, and now want to raise the silly quibble that the cheque is my personal cheque because it did not issue first from the treasurer (Mr. James Hope).

With a knowledge of the foregoing, please write me a full account of all that transpired respecting the cheque, and answering the following queries:—

1 Did Mr. Hope authorize you to ask me to sign cheque when you did?
2 Why did you or McCulloch not get it signed by Mr. Hope?
3 What did McCulloch say when you gave it him?
4 Did Masson ever talk to you about it?
5 Would the bank have cashed cheque with my signature alone?
6 Were any cheques ever cashed without Hope's signature?
7 Did any of directors ever repudiate cheque and say it was mine?
8 Are Hope and Featherston capable of doing the dirty act I have mentioned?

I have defended your conduct stoutly, and expect you to answer at once the above interrogatives boldly, honestly and fully.

Yours truly,
R. J. WICKSTEED.

This brought the following reply:—

December 12th, 1887.

Dr. R. J. Wicksteed,
Ottawa,

DEAR DOCTOR,—I am to-day in receipt of yours dated 6th inst.

Excuse writing for I have a most abominable pen, and am also on the sick list and too nervous to write much.

I will answer your queries seriatim.

1. The cheque for McCulloch was voted and drawn out by me and signed by you in the interim of Ashfield's resignation and Hope's positive acceptance of office. When I asked Hope for cheque he said that he had not the cheque book, but as it was in my possession I was to get you to sign it.
2. This is answered in first.
3. McCulloch stated that he should have to pay dearly for it as the date was so long.
4. No.
5. Yes; the bank did, I believe, cash two cheques signed by you alone.
6. Yes; as above, I believe several.
7. They never repudiated the cheque at any of the formal meetings. No mention of anything of the kind is in the minute book. It was accepted as the company's cheque by McCulloch's solicitor at the special meeting when the affair was settled. The solicitor if an honest man, and not Featherston's tool, can vouch for that.

Hope is a man of expediency and capable of anything to save his own pocket—hence his getting Baily to cash with company's money one of his own cheques, during my absence.

Featherston's conceit of his own legal knowledge frequently leads him astray; and, as a rule, acts with Hope under all circumstances where he thinks he can annoy you.

I consider they have both acted very ungentlemanly towards you in many instances.

Baily will forward any letters to me you entrust him with.

I will write you another letter when I am better.

Believe me, dear Doctor,
Yours respectfully,
J. A. MACPHERSON, L,L.D., &c.

At your President's request, Dr. Macpherson made a solemn declaration as to the above facts before H. B. M. Consul, at Boston, U. S. A. Your president can corroborate most of the facts alleged to be true by Dr. Macpherson,—and could have proved them at the trial had he not considered his non-liability to be almost self-evident.

The Judge decided that he *was* liable.

Had the case admitted of appeal, into appeal it would have gone, and of course judgment would have been reversed. Not being permitted this indulgence, your President must be allowed to give as follows in writing what he would have done orally before a higher tribunal.

Case-HARDENED JUDGES.

The judgment rendered in the Division Court case reported above presents a humorous aspect as showing how the whole machinery of the law may be diverted for several days, employing two County Court judges and two barristers; and detaining a whole host of fretting attorneys and witnesses, in order to decide judicially but wrongfully what any business man of fair intelligence and experience would have decided practically but righteously in a few minutes. This judgment, really rendered by two County Court judges of Ontario, residing in Ottawa, because their views thereon are known to coincide, furnishes also a melancholy example of the evils resulting from a long familiarity with technicalities rather than principles. Evils springing from want of a sound professional training in the law; a training which would encourage reflexion and give the power, and confer the habit of thinking and judging for oneself, and not relying blindly on the judgment of others. An education which would teach the fact that cases in law when decided only establish principles and not iron rules. Legal training in Ontario now-a-days is apt to produce students of narrow views, practitioners of quirks, quibbles and subterfuges, and *case*-hardened judges. *Revenons a nos moutons* or to the case of Masson (rather McCulloch or Code), vs Wicksteed, as decided lately by Judge Lyon, in the Division Court of Ottawa.

The Defendant, president of an incorporated company, in obedience to a resolution of the Directors, draws a cheque in the form and manner usual to most companies, in favour of McCulloch, a former servant of the company, and post-dates it. Masson discounts the cheque ; but when it is presented at the bank, the answer "no funds" is returned. Masson is paid cash by McCulloch, and the cheque is returned to McCulloch. McCulloch by his solicitor, Mr. Code, should then have sued the company on the cheque or for work and labor done, etc., because, irrespective of the manner in which the cheque was drawn out, the cheque had been accepted all through as being that of the company, by McCulloch, Code, Masson, the Bank and the Directors of the Company. And the Company was virtually insolvent, and the President was a better [illegible] to pluck. So McCulloch, Code, and the Directors, through

whose bad management the Company had been beggared, in order to save their own pockets and to indulge their jealous spite, went to work to find out how a cheque which had been acknowledged by all the parties, up to the time of its dishonor, to be that of the Company in fact and form, could be made to appear to be the personal cheque of the Drawer, to the eyes of the County Judges.

The farcical argument advanced in Court and in Chambers was as follows:—"Several cases decide that a post-dated cheque is an Inland Bill of Exchange: several cases declare that Bills of Exchange drawn by a company should have a particular usual form: this particular post-dated cheque has not that particular usual form; therefore it cannot be the Company's cheque; therefore it must be the Drawer's personal cheque."

The two Carleton County Judges agreed as to the correctness of this extraordinary argument: and one of them rendered judgment in accordance with the conclusions of the foregoing syllogism; whose premises are founded on decisions taken from various cases without any regard being paid to the difference existing between the facts disclosed in those cases and those proved in this particular case. The judgment is so ridiculous in its results that I cannot help thinking that the Judges combined in an attempt to take a playful "rise" out of Dr. Wicksteed, who although a barrister is not now a regular practioner—but in this case appeared in his own defence.

Let us consider the reason why cheques or bills of exchange are usually signed in a certain way on behalf of a company. It is this: "Cheques must be properly signed by a firm keeping account at a banker's, as it is part of the implied contract of the banker, that only cheques so signed shall be paid." (Bouvier's Dictionary). In case of promissory notes or bills they must be signed in such a way as not to deceive the parties negotiating them. These parties must not be led to think that they have a rich company as security for the payment, when they have in reality only a poor individual. In the case before us the cheque was the usual and acknowledged cheque of the Company; no one was deceived or in ignorance of the facts; but then the individual defendant was comparatively rich, and the Company absolutely poor. So that in order to have the former condemned to pay, judgments which may have been correct when taken in connection with the cases in which they were rendered, were unscrupulously applied to this case, to which they had no relation. In this way a case which ought to have been decided, following the rule of non-appealable courts, according to equity and good conscience, was decided without regard to common custom or reason.

Had the judge received a good grounding in legal logic he would have said, after hearing the argument of Mr. Code, "There are three maxims of Civil Law which apply here: *1. Consensus tollit errorem. 2. Modus et conventio vincunt legem*, and *3. Cessante ratione legis, cessat*

ipsa lex. Mr. Wicksteed signed this cheque as an authorized person on behalf of the company, and was such to the knowledge of all parties to the cheque. It is the company's cheque." Action dismissed with costs and a little advice to the Plaintiff's Attorney, to study *Roman* law—which is written reason.

Judge Lyon says in effect by his judgment, everybody knows this to be the company's cheque, the company never repudiated it and is willing to pay it when called on, but I won't allow the company to be asked to pay. You are all wrong in thinking that *to be* what you know *is*, for I see that several decisions,—in cases, to be sure, very different from this one, but then they are *decisions*,—say that the Defendant is personally liable. This I hold to be good law, though, when I reflect on it, it does look even to my *case*-hardened mind to be contrary to fact, custom, reason, equity, and good conscience.

Blackstone foresaw the evils which would result from a case of apprenticeship and study in England, similar to what is now adopted in the Province of Ontario. He thus writes, at page 32 of his celebrated commentaries :—

"Making therefore due allowance for one or two shining exceptions, experience may teach us to foretell that the lawyer educated for the bar in subservience to attorneys and solicitors will find that he has begun at the wrong end. If practice be the whole he is taught, practice must also be the whole he will ever know; if he be uninstructed in the elements and first principles upon which the rules of practice should be founded, the least variation from established precedents will totally distract and bewilder him. *Ita lex scripta esl*, is the utmost his knowledge will arrive at ; he must never aspire to form, and seldom expect to comprehend, any arguments drawn, *a priori*, from the spirit of the laws, and the natural foundations of justice."

The only method of arriving at this happy consummation so devoutly to be wished, in Ontario, namely that all barristers and judges shall be able to form and comprehend arguments drawn from the spirit of the laws and the natural foundations of justice, and for judges to give decisions in cases in conformity with such arguments, is, I think to insist upon a full course and examination in the principles of law when studying for the profession,

Radical Ontario is in this respect, far behind Conservative England. Utility of a knowledge of Roman Law, as law, is undeniable, forming as it does the basis of the laws of all Latin nations. Even the Common Law of England is greatly indebted for its vigour and philosophic accuracy to Justinian's Code.

In England the examination which must be passed before a law student can be "called" is divided in two parts—the first being the Roman law and the second in English law. He may take both at the same time, or he may take the Roman law first but he cannot take the English law before the Roman. He may take the Roman law any

time after he has kept four terms, but cannot take the English until he has kept at least nine terms. This is the only remedy for the present condition of affairs in the matter of the legal profession in Ontario. With the example of such a judgment as the one given by Judge Lyon before them, the Law Society of Upper Canada should take immediate steps to place Roman Law in the Law Student's Curriculum.

R. J. WICKSTEED.

NOTE.—The above is only an Extract from the Report of the President and Solicitor of the Coffee House Company.

Should time and money permit the full report will be printed. It will be found interesting and useful as touching upon the history and conduct of the Coffee House; and various matters of interest to the Profession, such as ignorance, etc., of Bailiffs, abuses in Judges' Chambers practice, Judge's error in burden of proof, want of decorum, etc., in Court Room, etc., etc.

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